

APPEAL NO. 020756
FILED MAY 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 6, 2002, the hearing officer resolved the sole disputed issue by finding that the great weight of the medical evidence is not contrary to the recommendations for spinal surgery from the respondent's (claimant) surgeon and his second opinion doctor. She concluded that the claimant's request for spinal surgery is approved and ordered the appellant (carrier) to pay for it. The carrier has requested our review and contends that "the great weight of the other medical evidence outweighs the surgical opinion evidenced in this claim and respectfully requests a reversal." The claimant filed a response, urging the sufficiency of the evidence to support our affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant's second opinion doctor issued a concurrence with the lumbar spine surgery proposed by the claimant's surgeon and that the carrier's second opinion doctor issued a nonconcurrence with the proposed surgery. The claimant testified that her first lumbar spine surgical procedure, performed on February 8, 2001, failed; that her surgeon proposes the revision surgery, which includes a fusion; that her surgeon explained the risks involved; and that both her surgeon and second opinion doctor feel that the proposed surgery will improve her condition. The carrier's second opinion doctor felt that the claimant has no spondylolysis or spondylolisthesis to account for pain from spinal hypermobility and that the claimant's lumbar disc "bulges" are not significant. The claimant's second opinion doctor felt that tests showed that the claimant has disruption of the discs at L4-5 and L5-S1, that all the various conservative measures have failed, and that he concurs with the need for the surgery proposed by the claimant's surgeon.

The hearing officer found that the claimant's second opinion doctor reviewed the medical records and test results and examined the claimant before issuing his concurrence in the proposed surgery, and that the great weight of the medical evidence is not contrary to the recommendations for the spinal surgery issued by the surgeon and the claimant's second opinion doctor. The surgeon's Recommendation for Spinal Surgery (TWCC-63) was apparently filed with the Texas Workers' Compensation Commission (Commission) in October 2001. Since this TWCC-63 was filed with the Commission after July 1, 1998, but prior to January 1, 2002, this spinal surgery dispute is governed by the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.206 (Rule 133.206). See Rule 133.206(m). Rule 133.206(k)(4) provides, in part, that

[o]f the three recommendations and opinions (the surgeon's, and the two second opinion doctors'), presumptive weight will be given to the two which

had the same result and they will be upheld unless the great weight of medical evidence is to the contrary. . . .

We are satisfied that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **EMPLOYERS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**HOWARD ORLA DUGGER
1702 NO. COLLINS BLVD. #200
RICHARDSON, TEXAS 75080-0260.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Roy L. Warren
Appeals Judge